

Sally J. Abrahamson
WERMAN SALAS P.C.
335 18th PI NE
Washington, D.C. 20002
Tel: (312) 419-1008
Fax: (312) 419-1025
sabrahamson@flsalaw.com

Attorney for Plaintiffs
NICHOLAS JONES, WAYNE PAMPALONI,
BRANDON MCCORMICK, DIMITRI
TREMBOIS, CLAYTON RABER, GEORGE
SUAREZ, and COURTNEY CLARKE

ADDITIONAL ATTORNEYS ON FOLLOWING PAGE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

NICHOLAS JONES, WAYNE PAMPALONI,
BRANDON MCCORMICK, DIMITRI
TREMBOIS, CLAYTON RABER, GEORGE
SUAREZ, and COURTNEY CLARKE, as
individuals and on behalf of all others similarly
situated,

Plaintiffs,

vs.

MEMORYBLUE, INC; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 34-2022-00319308-CU-OR-GDS

[Assigned for all purposes to Hon. Jill H. Talley,
Dept. 25]

CLASS ACTION

**JOINT STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE**

Complaint filed: May 4, 2022
Trial Date: None

Jennifer Liu (State Bar No. 279370)
LIU PETERSON-FISHER LLP
800 Menlo Avenue, Suite 102
Menlo Park, CA 94025
Tel: (650) 461-9000
Fax: (650) 460-6967
jlio@liulawpc.com

Additional Attorneys for Plaintiffs
NICHOLAS JONES, WAYNE PAMPALONI,
BRANDON MCCORMICK, DIMITRI
TREMBOIS, CLAYTON RABER, GEORGE
SUAREZ, and COURTNEY CLARKE

David G. Hoiles, Jr. (SBN 185298)
JACKSON LEWIS P.C.
225 Broadway, Suite 2000
San Diego, CA 92101
Telephone: (619) 573-4900
Facsimile: (619) 573-4901
David.Hoiles@jacksonlewis.com

Attorneys for Defendant
MEMORYBLUE, INC.

1 This Joint Stipulation of Class Action Settlement and Release ("Joint Stipulation of Settlement")
2 is made by and between Plaintiffs NICHOLAS JONES, WAYNE PAMPALONI, BRANDON
3 MCCORMICK, DIMITRI TREMBOIS, CLAYTON RABER, GEORGE SUAREZ, and COURTNEY
4 CLARKE, on behalf of themselves and all members of the California Settlement Class or FLSA
5 Collective, as defined below, on the one hand, and Defendant MEMORYBLUE, INC., on the other hand,
6 in the Action. This Joint Stipulation of Settlement resolves all claims that were asserted or could have
7 been asserted against Defendant and the other Released Parties pertaining to the claims in the Action.

8 **I. DEFINITIONS**

9 **A. Action.** The term "Action" as used herein means the pending civil action entitled
10 *NICHOLAS JONES, WAYNE PAMPALONI, BRANDON MCCORMICK, DIMITRI TREMBOIS,*
11 *CLAYTON RABER, GEORGE SUAREZ, and COURTNEY CLARKE v. MEMORYBLUE, INC.*, filed on
12 May 4, 2022, in Sacramento Superior Court, Case No. 34-2022-00319308-CU-OR-GDS.

13 **B. Administrative Costs.** The term "Administrative Costs" as used herein means all
14 administrative costs of settlement, including cost of sending the Notice, claims administration, and any
15 fees and costs incurred or charged by the Claims Administrator in connection with the execution of its
16 duties under this Joint Stipulation of Settlement.

17 **C. California Released Claims Period.** The term "California Released Claims Period" as
18 used herein means the period from December 2, 2016 through the date the Court grants Preliminary
19 Approval.

20 **D. California Settlement Class.** For settlement purposes only, the Parties agree to the
21 certification of a class pursuant to California Code of Civil Procedure § 382 defined as: "all persons who
22 are current or former employees of Defendant who worked in California as Sales Development
23 Representatives at any time between December 2, 2016 and June 30, 2022."

24 **E. Claims Administrator.** The term "Claims Administrator" as used herein means Analytics
25 Consulting LLC, which will be responsible for the administration of the settlement pursuant to the terms
26 as provided in Sections VIII-X, XIII- XVII of this Joint Stipulation of Settlement.

27 **F. Class Counsel.** The term "Class Counsel" as used herein means Douglas M. Werman,
28 Esq., Maureen A. Salas, Esq., Sally J. Abrahamson, Esq., Jennifer Liu, Esq., and all other lawyers of

1 WERMAN SALAS P.C. or LIU PETERSON-FISHER LLP who are (or were at some time) counsel for
2 and acting on behalf of Named Plaintiffs and the California Settlement Class or FLSA Collective.

3 **G. Class Data.** The term "Class Data" as used herein refers to the following information about
4 each member of either the California Settlement Class or FLSA Collective: (1) full legal name; (2) last
5 known home address; (3) last known email address; (4) last known cell phone number; (5) Social Security
6 Number; (6) the unique Associate Identification Number assigned by Defendant; and (7) dates of
7 employment during the applicable Released Claims Periods that each individual worked as a member of
8 either the California Settlement Class or FLSA Collective.

9 **H. Court.** The term "Court" as used herein means the Superior Court of the State of California
10 for the County of Sacramento.

11 **I. Days.** The term "Days" refers to calendar days.

12 **J. Defendant.** The term "Defendant" as used herein means MEMORYBLUE, INC.

13 **K. Defense Counsel.** The term "Defense Counsel" as used herein means the law firm of
14 JACKSON LEWIS P.C.

15 **L. Effective Date.** The term "Effective Date" as used herein means the date when all of the
16 following events have occurred: (1) this Joint Stipulation of Settlement has been executed by all Parties;
17 (2) the Court has entered an Order granting preliminary approval to this Joint Stipulation of Settlement;
18 (3) the Notice has been given to the putative members of the California Settlement Class, providing them
19 with an opportunity to object to the terms of this Joint Stipulation of Settlement or to opt out of this Joint
20 Stipulation of Settlement, and to members of the FLSA Collective; (4) the Court has held a formal fairness
21 hearing and entered a final Order and Judgment approving the terms of this Joint Stipulation of Settlement,
22 certifying the California Settlement Class, and dismissing the Action with prejudice; (5) twenty (20) Days
23 have passed since the Court has entered a final Order and Judgment certifying the California Settlement
24 Class, dismissing the Action with prejudice, and approving this Joint Stipulation of Settlement; and (6) in
25 the event there are written objections filed prior to the final fairness hearing that are not later withdrawn
26 or denied, the later of the following events: seven (7) Days after the period for filing any appeal, writ, or
27 other appellate proceeding opposing the Court's Final Approval has elapsed without any appeal, writ, or
28 other appellate proceeding having been filed; or, if any appeal, writ, or other appellate proceeding

opposing the Court's Final Approval has been filed, seven (7) Days after any appeal, writ, or other appellate proceedings opposing this Joint Stipulation of Settlement has been finally and conclusively dismissed with no right to pursue further remedies or relief.

M. Eligible Workweeks. The term "Eligible Workweeks" as used herein means the number of workweeks worked by the members of either the California Settlement Class or FLSA Collective within the applicable Released Claims Periods.

N. Employer Payroll Taxes. The term "Employer Payroll Taxes" means Defendant's share of taxes that an employer is required to pay arising out of or based upon the payment of wages to Participating Class and Collective Members as part of this Joint Stipulation of Settlement, including FICA, FUTA, and SUTA obligations.

O. Final Approval. The term "Final Approval" as used herein means the Court's issuance of an Order granting the relief set forth in this Joint Stipulation of Settlement and to be requested by Named Plaintiffs by way of a Motion for Final Approval and Settlement of Class Action.

P. FLSA Collective. The term "FLSA Collective" as used herein means "all persons who are current or former employees of Defendant who worked outside of California as Sales Development Representatives at any time between December 2, 2017 and June 30, 2022."

Q. FLSA Released Claims Period. The term "FLSA Released Claims Period" as used herein means the period from December 2, 2017 through the date of the Court grants Preliminary Approval.

R. LWDA. The term "LWDA" shall refer to the California Labor and Workforce Development Agency.

S. Maximum Settlement Amount. The term "Maximum Settlement Amount" as used herein means a fund in the sum of Two Million Five Hundred Fifty Thousand Dollars and Zero Cents (\$2,550,000.00), which shall be paid by Defendant, and from which the Net Settlement Payment, Administrative Costs pursuant to Section XIII, a litigation enhancement to Named Plaintiffs pursuant to Section XIV, Court approved attorneys' fees and litigation costs pursuant to Section XV, payment of PAGA penalties to the LWDA pursuant to Section XVI, employees' share of taxes, pursuant to Section XVII, statutory penalties, and interest shall be paid, except as provided herein. Defendant will pay the Employer Payroll Taxes in addition to the Maximum Settlement Amount.

1 **T. Named Plaintiffs.** The term “Named Plaintiffs” as used herein means NICHOLAS
2 JONES, WAYNE PAMPALONI, BRANDON MCCORMICK, DIMITRI TREMBOIS, CLAYTON
3 RABER, GEORGE SUAREZ, and COURTNEY CLARKE , the current plaintiffs in the Action.

4 **U. Net Settlement Amount.** The term “Net Settlement Amount” as used herein means the
5 Maximum Settlement Amount minus Administrative Costs, any award of attorneys’ fees and litigation
6 costs, payment of PAGA penalties to the LWDA, and a litigation enhancement to Named Plaintiffs, as
7 provided in Sections XIII to XVI, respectively. The maximum anticipated Net Settlement Amount is
8 \$1,515,000.00.

9 **V. Net Settlement Payment.** The term “Net Settlement Payment” means the total payments
10 to be made to the Participating Class Members and Participating Collective Members pursuant to this Joint
11 Stipulation of Settlement, including employees’ share of taxes, penalties, and interest.

12 **W. Notice.** The term “Notice” as used herein shall mean the jointly prepared Notice of
13 Proposed Class Action Settlement, a copy of which is attached as Exhibit “A,” which in substance will be
14 provided to each member of the California Settlement Class and FLSA Collective.

15 **X. Objection.** The term “Objection” refers to the process by which members of the California
16 Settlement Class may timely object to the terms and conditions of this Joint Stipulation of Settlement, as
17 set forth in Paragraph VIII(c). However, members of the California Settlement Class may not object to
18 the settlement of the PAGA Claim.

19 **Y. PAGA.** The term “PAGA” shall refer to the Labor Code Private Attorneys General Act of
20 2004, Labor Code sections 2698, *et seq.*

21 **Z. PAGA Claim.** The term “PAGA Claim” shall refer to the claims in the Action asserting a
22 cause of action for alleged violations of the PAGA.

23 **AA. PAGA Collective.** The term “PAGA Collective” as used herein means “all persons who
24 are current or former employees of Defendant who worked in California as Sales Development
25 Representatives at any time between December 2, 2019 and June 30, 2022.”

26 **BB. PAGA Released Claims Period.** The term “PAGA Released Claims Period” as used
27 herein means the period from December 2, 2019 through the date the Court grants Preliminary Approval.

1 **CC. Participating Class Members.** The terms “Participating Class Member” or “Participating
2 Class Members” as used herein refer to the members of the California Settlement Class who do not timely
3 submit a Request to be Excluded.

4 **DD. Participating Collective Members.** The terms “Participating Collective Member” or
5 “Participating Collective Members” as used herein refer to the members of the FLSA Collective who
6 negotiate their settlement payment.

7 **EE. Party or Parties.** The terms “Party” or “Parties” as used herein shall refer to Named
8 Plaintiffs, Defendant, or all of them, as may be appropriate.

9 **FF. Preliminary Approval.** The term “Preliminary Approval” as used herein means the
10 Court’s issuance of an Order to be requested by Named Plaintiffs by way of a Motion for Preliminary
11 Approval and Settlement of Class Action granting preliminary approval of the settlement pursuant to the
12 terms of this Joint Stipulation of Settlement.

13 **GG. Released Claims Periods.** The term “Released Claims Periods” as used herein means the
14 California Released Claims Period, the FLSA Released Claims Period, or the PAGA Released Claims
15 Period to which members of the California Settlement Class or FLSA Collective may belong.

16 **HH. Released Parties.** The term “Released Parties” means Defendant, and all of its present and
17 former parent companies, affiliates, subsidiaries, members, divisions, predecessors, insurers, reinsurers,
18 successors, and assigns, and their current and former employees, attorneys, officers, directors, owners,
19 and agents thereof, both individually and in their business capacities, and any other individual who or
20 entity that could be liable for any of the claims being released pursuant to Section VII of this Joint
21 Stipulation of Settlement.

22 **II. Request to be Excluded.** The term “Request to be Excluded” as used herein means a
23 written request signed by a member of the California Settlement Class or their authorized representative
24 requesting to exclude themselves from the California Settlement Class pursuant to the terms of this Joint
25 Stipulation of Settlement. However, members of the PAGA Collective shall be prohibited from submitting
26 a Request to be Excluded with respect to the PAGA Claim and, thus, if a member of the PAGA Collective,
27 shall receive an individual PAGA payment and be bound by the release of the PAGA Claim regardless of
28 whether they submit a Request to be Excluded from the California Settlement Class.

1 **JJ. Settlement Account.** The term “Settlement Account” means a Qualified Settlement Fund
2 (“QSF”) established and controlled by the Settlement Administrator.

3 **II. BACKGROUND**

4 A. The Parties began to discuss early resolution of the potential claims to be asserted in the
5 Action in November 2020. To that end, the Parties agreed to conduct informal discovery and attend formal
6 mediation. Such investigation included the exchange of information and documentation concerning the
7 anticipated claims to be set forth in the Action, including compensation data, dates of employment, state
8 of employment, employee lists, and information regarding the financial situation of Defendant. The Parties
9 also executed a tolling agreement effective December 2, 2020.

10 B. The Parties agreed to attend a full-day mediation with Dina Jansenson, Esq., a third party
11 neutral affiliated with JAMS. The Parties engaged in good faith, arms-length negotiations with Ms.
12 Jansenson on August 4, 2021, but were unable to reach a settlement at that time. The Parties continued
13 their negotiations with the assistance of Ms. Jansenson on November 9, 2021, and were able to reach a
14 tentative settlement of the Action, subject to finalization of this formal Joint Stipulation of Settlement and
15 the approval of the Court. The Parties have since engaged in extensive negotiations about the terms and
16 conditions of this Joint Stipulation of Settlement. The Parties have now entered into this formalized Joint
17 Stipulation of Settlement for submission to the Court for Preliminary and Final Approval.

18 C. On August 9, 2021, Plaintiff Suarez submitted written notice to the LWDA regarding his
19 intent to file an action seeking civil penalties under the PAGA.

20 D. On March 25, 2022, Defendant provided an Excel spreadsheet to Class Counsel,
21 identifying by unique Associate Identification Numbers, each potential member of either the California
22 Settlement Class or the FLSA Collective as of February 28, 2022, and their respective dates of
23 employment with Defendant as a Sales Development Representative, a copy of which is attached as
24 Exhibit “B.” The Parties acknowledge disputes as to the number of members of the California Settlement
25 Class and FLSA Collective and the Eligible Workweeks for those individuals, as of February 28, 2022,
26 but have relied upon this data during the negotiations of this Joint Stipulation of Settlement.

27 E. On May 5, 2022, Defendant represented to Class Counsel that an additional 141 individuals
28 have been hired by Defendant or assumed the role of a Sales Development Representative with Defendant

1 between March 1, 2022 and May 2, 2022. Defendant also anticipates that it is likely to hire an additional
2 139 individuals for a Sales Development Representative position between May 3, 2022 and June 30, 2022.

3 F. On May 4, 2022, Named Plaintiffs filed the Action against Defendant alleging causes of
4 action for: (1) failure to pay wages, including overtime, in violation of the Fair Labor Standards Act, 29
5 U.S.C. sections 201, *et seq.*, (2) failure to pay minimum wages in violation of California Labor Code
6 sections 1194, 1194.2, and 1197; (3) failure to pay overtime in violation of California Labor Code sections
7 510, 1194, and 1198; (4) failure to timely pay wages in violation of California Labor Code sections 201-
8 204 and 210; (5) failure to provide accurate, itemized wage statements in violation of California Labor
9 Code section 226; (6) failure to provide meal and rest periods or premium payments in violation of
10 California Labor Code sections 226.7 and 512; (7) failure to reimburse employee for business expenses
11 in violation of California Labor Code section 2802; (8) unlawful, unfair, or deceptive business practices
12 in violation of California Business and Professions Code sections 17200, *et seq.*; and (9) violations of the
13 PAGA. Specifically, Named Plaintiffs allege that Defendant failed to pay all wages owed, failed to
14 properly calculate the correct overtime rate, failed to pay overtime wages owed, failed to pay minimum
15 wages, failed to provide meal and rest periods or pay premiums for missed, late, or short meal or rest
16 periods, failed to timely pay wages owed during employment and upon separation, made unlawful
17 deductions from wages, failed to reimburse for necessary business expenses, failed to provide accurate
18 itemized wage statements, failed to keep accurate records, violated California's Unfair Competition Law,
19 and violated the PAGA.

20 G. Class Counsel have conducted an investigation of the law and facts relating to the claims
21 asserted in the Action and have concluded, taking into account the sharply contested issues involved, the
22 expense and time necessary to pursue the Action through trial and any appeals, the financial condition of
23 Defendant, the risks and costs of prosecution of the Action, the risk of an adverse outcome, the
24 uncertainties of complex litigation, and the substantial benefits to be received by the Named Plaintiffs and
25 the members of the California Settlement Class and FLSA Collective pursuant to this Joint Stipulation of
26 Settlement, that a settlement with Defendant on the terms and conditions set forth in this Joint Stipulation
27 of Settlement is fair, reasonable, adequate, and in the best interests of the California Settlement Class, the
28 FLSA Collective, and the LWDA. Named Plaintiffs, on behalf of themselves and the California Settlement

1 Class and FLSA Collective, have agreed to settle the Action with Defendant on the terms set forth in this
2 Joint Stipulation of Settlement.

3 H. Defendant has concluded that, because of the substantial expense of defending against the
4 claims asserted in the Action, the length of time necessary to resolve the issues presented herein, the
5 inconvenience involved, the current global pandemic, COVID-19, and the concomitant disruption to its
6 business operations, it is in its best interests to accept the terms of this Joint Stipulation of Settlement.
7 Defendant denies each of the allegations and claims asserted against it in the Action. However, Defendant
8 nevertheless desires to settle the Action for the purpose of avoiding the burden, expense, and uncertainty
9 of continuing litigation and for the purpose of putting to rest the controversies engendered by the Action.

10 I. This Joint Stipulation of Settlement is intended to and does effectuate the full, final, and
11 complete resolution of all allegations and claims that were asserted, or could have been asserted, in the
12 Action by Named Plaintiffs and members of the California Settlement Class or FLSA Collective as set
13 forth in Section VII(A through C) below. Additionally, this Joint Stipulation of Settlement shall operate
14 as a full, complete, and final release of the PAGA Claim of all members of the PAGA Collective,
15 regardless of whether any such member of the PAGA Collective submitted a timely, valid Request to be
16 Excluded pursuant to this Joint Stipulation of Settlement.

17 **III. JURISDICTION**

18 The Court has jurisdiction over the Parties and the subject matter of this Action. The Action
19 includes claims that, while Defendant denies them in their entirety, would, if proven, authorize the Court
20 to grant relief pursuant to the applicable statutes. After the Court has granted Final Approval of the terms
21 of this Joint Stipulation of Settlement and after the Court has ordered the dismissal with prejudice of the
22 Action, pursuant to California Code of Civil Procedure section 664.6 the Court shall retain jurisdiction of
23 this Action solely for the purpose of interpreting, implementing, and enforcing this Joint Stipulation of
24 Settlement consistent with the terms set forth herein.

25 **IV. STIPULATION OF CLASS CERTIFICATION**

26 The Parties stipulate to the certification of the California Settlement Class for purposes of this Joint
27 Stipulation of Settlement only. This Joint Stipulation of Settlement is contingent upon Preliminary and
28 Final Approval and certification of the California Settlement Class for purposes of this Joint Stipulation

1 of Settlement only. Should the terms of this Joint Stipulation of Settlement not become final, for whatever
2 reason, the fact that the Parties were willing to stipulate provisionally to class certification of the California
3 Settlement Class as part of this Joint Stipulation of Settlement shall have no bearing on, and shall not be
4 admissible in connection with, the issue of whether a class should be certified in a non-settlement context
5 in the Action. Defendant expressly reserves the right to oppose class certification should this Joint
6 Stipulation of Settlement be modified or reversed on appeal or otherwise not become final.

7 **V. MOTION FOR PRELIMINARY APPROVAL**

8 Named Plaintiffs will bring a motion before the Court for an Order granting Preliminary Approval,
9 including approval of the Notice attached as Exhibit "A," and conditional certification of the California
10 Settlement Class for settlement purposes only. Class Counsel will prepare the Motion for Preliminary
11 Approval.

12 **VI. STATEMENT OF NO ADMISSION**

13 A. Defendant denies liability to Named Plaintiffs, the California Settlement Class, the FLSA
14 Collective, and the LWDA upon any claim or cause of action. This Joint Stipulation of Settlement does
15 not constitute, nor is it intended to constitute, an admission by Defendant or any of the other Released
16 Parties as to the merits, validity, or accuracy of any of the allegations or claims made against Defendant
17 in the Action.

18 B. Nothing in this Joint Stipulation of Settlement, nor any action taken in implementation
19 thereof, nor any statements, discussions, or communications, nor any materials prepared, exchanged,
20 issued, or used during the course of the negotiations leading to this Joint Stipulation of Settlement, is
21 intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used, or
22 be admissible in any way in the Action or any other judicial, arbitral, administrative, investigative, or other
23 forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance,
24 regulation, rule, or executive order, or any obligation or duty at law or in equity. The Parties themselves
25 agree not to introduce, use, or admit this Joint Stipulation of Settlement, directly or indirectly, in the Action
26 or any other judicial, arbitral, administrative, investigative, or other forum or proceeding, as purported
27 evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or
28 executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding

1 the foregoing, this Joint Stipulation of Settlement may be used in any proceeding before the Court that has
2 as its purpose the interpretation, implementation, or enforcement of this Joint Stipulation of Settlement or
3 any orders or judgments of the Court entered in connection with resolution of the Action pursuant to the
4 terms of this Joint Stipulation of Settlement.

5 C. None of the documents produced or created by Named Plaintiffs, the California Settlement
6 Class, or the FLSA Collective in connection with the claims procedures or claims resolution procedures
7 constitute, and they are not intended to constitute, an admission by Defendant or any of the other Released
8 Parties of any violation of any federal, state, or local law, statute, ordinance, regulation, rule, or executive
9 order, or any obligation or duty at law or in equity.

10 D. The Parties agree that class certification pursuant to California Code of Civil Procedure
11 section 382 under the terms of this Joint Stipulation of Settlement is for settlement purposes only. Nothing
12 in this Joint Stipulation of Settlement will be construed as an admission or acknowledgement of any kind
13 that any class should be certified or given collective treatment in the Action or in any other action or
14 proceeding. Further, neither this Joint Stipulation of Settlement nor the Court's actions with regard to this
15 Joint Stipulation of Settlement will be admissible in any court or other tribunal regarding the propriety of
16 class certification or collective treatment. In the event this Joint Stipulation of Settlement is not approved
17 by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Named Plaintiffs
18 will not be deemed to have waived, limited, or affected in any way any claims, rights, or remedies in the
19 Action, and Defendant will not be deemed to have waived, limited, or affected in any way any of its
20 objections or defenses in the Action.

21 **VII. WAIVER, RELEASE, DISMISSAL, AND CONFIDENTIALITY**

22 **A. Release by All Participating Class Members.**

23 Upon the Effective Date, Named Plaintiffs and all other Participating Class Members (individually
24 and on behalf of their heirs, executors, administrators, representatives, attorneys, successors, and assigns)
25 will release and forever discharge the Released Parties from any and all claims under state, federal, or
26 local law, whether statutory, common law, or administrative law, arising out of or related to the allegations
27 set forth in the operative Complaint in the Action, including but not limited to unpaid wages, statutory
28 penalties, civil penalties, including PAGA penalties, injunctive relief, punitive damages, liquidated

1 damages, penalties of any nature, interest, fees, and costs, that arose during the California Released Claims
2 Period. The allegations set forth in the operative Complaint in the Action for violations of California law
3 include, but are not limited to, unpaid wages, unpaid overtime; violations of meal and rest period
4 requirements; failure to timely pay wages during employment and upon separation; unlawful deductions
5 for training costs; failure to reimburse for necessary business expenses, failure to provide accurate wage
6 statements; failure to keep accurate records; violations of California's Unfair Competition Law; and
7 violations of the PAGA.

8 **B. Release by Participating Collective Members.**

9 Participating Collective Members (individually and on behalf of their heirs, executors,
10 administrators, representatives, attorneys, successors, and assigns) will release and forever discharge the
11 Released Parties from any and all claims under state, federal, or local law arising out of or related to the
12 allegations set forth in the operative Complaint in the Action, including but not limited to unpaid wages,
13 unpaid overtime, liquidated damages, penalties of any nature, interest, fees, and costs that arose during
14 the FLSA Released Claims Period.

15 **C. Release by Named Plaintiffs.**

16 Named Plaintiffs further agree that in exchange for Defendant's payment to Named Plaintiffs of
17 the Court-approved litigation enhancement, Named Plaintiffs will execute an individual settlement
18 agreement and general releases of all claims in a form that is mutually acceptable to the Parties.

19 Nothing contained in this Joint Stipulation of Settlement shall be deemed a release or waiver by
20 Named Plaintiffs of claims Named Plaintiffs may have against any of the Released Parties for: (a)
21 unemployment, disability, or paid family leave insurance benefits pursuant to the terms of applicable
22 federal, state, or local law; (b) workers' compensation insurance injury or pay benefits, under the terms of
23 any worker's compensation insurance policy or fund of the Plaintiff; or (c) any claims that, under
24 applicable federal, state, or local law, are not waivable.

25 **D. Confidentiality.**

26 Named Plaintiffs and Class Counsel will not make any public disclosure regarding the terms of
27 this Joint Stipulation of Settlement until after the Motion for Preliminary Approval has been filed. Class
28 Counsel will take all steps necessary to ensure Named Plaintiffs are aware of, and will encourage them to

1 adhere to, the restriction against any public disclosure of the terms of this Joint Stipulation of Settlement
2 until after the Motion for Preliminary Approval has been filed.

3 Following Preliminary Approval of this Joint Stipulation of Settlement, Named Plaintiffs and Class
4 Counsel will not have any communications with any media, other than to direct any media inquiries to the
5 public records of the Action on file with the Court. Class Counsel will take all steps necessary to ensure
6 Named Plaintiffs are aware of, and will encourage them to adhere to, the restriction against any media
7 comment on this Joint Stipulation of Settlement and its terms.

8 **VIII. NOTICE, OBJECTIONS, AND EXCLUSION RIGHTS**

9 **A. Notice.**

10 **a. Format.**

11 The Parties, through their respective attorneys, have jointly prepared the draft Notice, which
12 includes information regarding the nature of the Action; a summary of the terms of this Joint Stipulation
13 of Settlement; the definition of the California Settlement Class, the FLSA Collective, and the PAGA
14 Collective; a statement that the Court has granted Preliminary Approval; the nature and scope of the claims
15 being released; the procedure and time period for objecting to this Joint Stipulation of Settlement (other
16 than the PAGA Claim); the procedure and time period for filing a Request to be Excluded (other than the
17 PAGA Claim); the date and location of the hearing seeking Final Approval; the calculation of the total
18 number of Eligible Workweeks; and the California Settlement Class Member or FLSA Collective
19 Member's estimated individual settlement amount.

20 Based upon the Class Data, the Claims Administrator will calculate the estimated individual
21 settlement awards to eligible members of the California Settlement Class and FLSA Collective. For each
22 member of the California Settlement Class and FLSA Collective, the Notice will also identify the number
23 of Eligible Workweeks that they worked during the applicable Released Claims Periods, their estimated
24 settlement payment, and inform that individual of their right to dispute this number within forty-five (45)
25 Days of the postmark date of the Notice. The resolution of any disputes concerning the number of Eligible
26 Workweeks is discussed in Section IX.

1 **b. Procedure for Mailing and Emailing**

2 With approval from the Court, the Notice will be provided to the members of the California
3 Settlement Class and FLSA Collective as follows:

4 As soon as practicable, but no later than thirty (30) Days following Preliminary Approval,
5 Defendant will provide the Class Data to the Claims Administrator and Class Counsel in Microsoft Excel
6 format, or any other format required by the Claims Administrator and Class Counsel, except Defendant
7 **will not** produce the last known home addresses, last known email addresses, last known cell phone
8 numbers, or Social Security numbers of the members of the California Settlement Class and FLSA
9 Collective to Class Counsel. Defendant further agrees to consult with the Claims Administrator and Class
10 Counsel prior to the production date to ensure that the format will be acceptable to the Claims
11 Administrator and Class Counsel. In the event a member of the California Settlement Class or FLSA
12 Collective reaches out to Class Counsel and Class Counsel needs additional contact information, Class
13 Counsel may request contact information from the Claims Administrator and the Claims Administrator
14 will provide such information to Class Counsel.

15 The Claims Administrator shall run all the addresses provided by Defendant through the United
16 States Postal Service NCOA database (which provides updated addresses for any individual who has
17 moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to
18 obtain current address information, and shall send the Notice to each member of the California Settlement
19 Class and FLSA Collective both via email and first-class regular U.S. Mail using the last known email
20 address and most current mailing address information available within twenty-one (21) Days of the receipt
21 of the Class Data from Defendant. The Notice shall provide the members of the California Settlement
22 Class forty-five (45) Days' notice of all applicable dates and deadlines.

23 If a Notice is returned from the initial notice mailing, the Claims Administrator will skip-trace
24 return mail and re-mail the Notice within five (5) Days. If the Claims Administrator is successful in
25 locating a new address, it will re-mail the Notice to the member of the California Settlement Class or
26 FLSA Collective. Further, any Notice returned with a forwarding address to the Claims Administrator, as
27 non-deliverable before the deadline date, shall be sent to the forwarding address affixed thereto. If a Notice
28 is re-mailed to a member of the California Settlement Class or FLSA Collective within twenty-one (21)

1 Days of the deadline date, that individual shall have twenty-one (21) Days from the date the Notice is re-
2 mailed to respond.

3 No later than twenty-four (24) Days prior to the hearing seeking Final Approval, the Claims
4 Administrator shall provide Class Counsel and Defense Counsel with a declaration attesting to the
5 completion of the notice process, including the number of attempts to obtain valid mailing addresses for
6 and re-sending of any returned Notices, as well as the number of valid disputes submitted, Requests to be
7 Excluded, and deficiencies that the Claims Administrator received.

8 **B. Disputes as to Number of Eligible Workweeks.**

9 Defendant's Class Data will be presumed to be correct, unless a particular member of the
10 California Settlement Class or FLSA Collective proves otherwise to the Claims Administrator by credible
11 evidence. All disputes as to the number of Eligible Workweeks worked by a member of the California
12 Settlement Class or FLSA Collective will be resolved and decided by the Claims Administrator and the
13 Claims Administrator's decision on all such disputes shall be final and non-appealable. Absent the receipt
14 of a dispute from a member of the California Settlement Class or FLSA Collective, the number of Eligible
15 Workweeks identified in the Notice to each member of the California Settlement Class or FLSA Collective
16 shall be determined to be accurate. Each member of the California Settlement Class or FLSA Collective
17 will be entitled to payment for at least one Eligible Workweek.

18 **C. Objections.**

19 In order for any member of the California Settlement Class to object to this Joint Stipulation of
20 Settlement, or any term of it, the person making the objection must not submit a Request to be Excluded
21 (*i.e.*, must not opt out). A member of the California Settlement Class making an objection to this Joint
22 Stipulation of Settlement may appear at the hearing seeking Final Approval with or without filing or
23 serving any written objection. A member of the California Settlement Class making a written objection
24 may mail their written objection to the Claims Administrator within forty-five (45) Days of the postmark
25 date of the Notice. The written objection shall include the name of the member of the California Settlement
26 Class and an explanation of the reasons for their objection. The member of the California Settlement Class
27 may elect to appear personally or through an attorney, at their own expense, at the hearing seeking Final
28 Approval, to present their objection directly to the Court. Any attorney who will represent an individual

objecting to this Joint Stipulation of Settlement must file a notice of appearance with the Court and serve Class Counsel and Defense Counsel no later than forty-five (45) Days after the Notice was initially mailed to the member of the California Settlement Class. If a member of the California Settlement Class objects to this Joint Stipulation of Settlement, that individual will remain a member of the California Settlement Class and, if the Court approves this Joint Stipulation of Settlement, that individual will be bound by the terms of this Joint Stipulation of Settlement and Final Approval in the same way and to the same extent as a member of the California Settlement Class who does not object to this Joint Stipulation of Settlement. The date of mailing of the Notice to the objecting member of the California Settlement Class shall be conclusively determined according to the records of the Claims Administrator. The Court retains final authority with respect to the consideration and admissibility of any objections by members of the California Settlement Class. Any member of the California Settlement Class who submits a written objection or makes an oral objection may also participate in this Joint Stipulation of Settlement. However, no member of the California Settlement Class is entitled to submit an objection to the settlement of the PAGA Claim.

Named Plaintiffs waive any right to object to this Joint Stipulation of Settlement, and hereby endorse the terms of this Joint Stipulation of Settlement as fair, reasonable, and adequate and in the best interests of the California Settlement Class and FLSA Collective.

D. Opportunity to be Excluded.

In order for any member of the California Settlement Class to validly exclude themselves from the California Settlement Class and this Joint Stipulation of Settlement (*i.e.*, to validly opt out), a Request to be Excluded must be signed by the member of the California Settlement Class or their authorized representative and sent to the Claims Administrator, postmarked by no later than forty-five (45) Days after the date the Claims Administrator initially mailed the Notice to the members of the California Settlement Class. The Notice shall contain instructions on how to opt out.

The date of the initial mailing of the Notice, and the date the signed Request to be Excluded was postmarked, shall be conclusively determined according to the records of the Claims Administrator. Any member of the California Settlement Class who timely and validly submits a Request to be Excluded will not be entitled to any individual settlement payment, will not be bound by the terms and conditions of this

1 Joint Stipulation of Settlement, and will not have any right to object, appeal, or comment thereon, other
2 than with respect to the PAGA Claim. No member of the California Settlement Class is entitled to submit
3 a Request to be Excluded from the settlement of the PAGA Claim and, thus, if a member of the PAGA
4 Collective submits a Request to be Excluded, that individual shall receive an individual PAGA payment
5 and be bound by the release of the PAGA Claim.

6 Any member of the California Settlement Class who does not timely mail a Request to be Excluded
7 will be deemed a Participating Class Member in accordance with this Joint Stipulation of Settlement.
8 Named Plaintiffs waive any right to be excluded from the California Settlement Class.

9 Should more than 10% of the California Settlement Class successfully request to be excluded,
10 Defendant shall retain the right, in the exercise of its sole discretion, to nullify this Joint Stipulation of
11 Settlement. In the event that Defendant exercises its right to nullify this Joint Stipulation of Settlement,
12 Defendant shall be solely responsible for any and all Administrative Costs incurred.

13 **E. Cooperation.**

14 The Parties, Class Counsel, and Defense Counsel all agree not to encourage members of the
15 California Settlement Class or FLSA Collective to refrain from participating in this Joint Stipulation of
16 Settlement, to opt out of this Joint Stipulation of Settlement, or to object to this Joint Stipulation of
17 Settlement, directly or indirectly, through any means. However, if a member of the California Settlement
18 Class or FLSA Collective contacts Class Counsel, Class Counsel may discuss the terms of this Joint
19 Stipulation of Settlement and the options available to that member of the California Settlement Class or
20 FLSA Collective.

21 **IX. DISPUTES AS TO ELIGIBLE WORKWEEKS.**

22 It is the Parties' intent that each Participating Class Member and Participating Collective Member
23 will be compensated from the Net Settlement Payment for each Eligible Workweek they worked. In the
24 Notice, each member of the California Settlement Class and FLSA Collective will receive a calculation
25 of the total number of Eligible Workweeks worked by them and an approximation of the lump-sum
26 payment to be paid to them, inclusive of their share of taxes, in the event every member of the California
27 Settlement Class and FLSA Collective participates in the settlement set forth in this Joint Stipulation of
28 Settlement.

1 If a member of the California Settlement Class or FLSA Collective does not dispute the number
2 of Eligible Workweeks set forth in the Notice, such person need not take further action to participate in
3 the settlement set forth in this Joint Stipulation of Settlement.

4 If the member of the California Settlement Class or FLSA Collective disputes the number of
5 Eligible Workweeks attributed to them in the Notice, such person must follow the directions in the Notice,
6 including preparing a statement setting forth the number of Eligible Workweeks that such person believes
7 in good faith is correct and stating that the member of the California Settlement Class or FLSA Collective
8 authorizes the Claims Administrator to review information regarding that individual's dates of
9 employment by Defendant as a Sales Development Representative to determine such information and
10 attaching any relevant wage statements or other documentation in support thereof. The member of the
11 California Settlement Class or FLSA Collective must mail the signed and completed statement no later
12 than forty-five (45) Days after the date of the mailing of the Notice, or the number of Eligible Workweeks
13 set forth in the Notice will govern the lump-sum payments to be made to the Participating Class Members
14 and Collective Members.

15 Upon timely receipt of any such challenge, the Claims Administrator, in consultation with Class
16 Counsel and Defense Counsel, will review the pertinent payroll records showing the dates that member of
17 the California Settlement Class or FLSA Collective was employed by Defendant as a Sales Development
18 Representative during the Released Claims Period, which records Defendant agrees to make available to
19 the Claims Administrator and Class Counsel.

20 After consulting with Class Counsel and Defense Counsel, the Claims Administrator shall compute
21 the number of Eligible Workweeks to be used in computing that member of the California Settlement
22 Class or FLSA Collective's *pro rata* share of the Net Settlement Amount. In the event there is a disparity
23 between the dates a member of the California Settlement Class or FLSA Collective claims he or she
24 worked for Defendant as a Sales Development Representative during the Released Claims Period and the
25 dates indicated by Defendant's records, Defendant's records will control unless inconsistent with itemized
26 wage statement(s) (or bona fide copies thereof) provided by the member of the California Settlement Class
27 or FLSA Collective, in which case the itemized wage statement(s) will control. The Claims
28 Administrator's decision as to the total number of Eligible Workweeks shall be final and non-appealable.

The Claims Administrator shall send written notice of the decision on any such claim to the member of the California Settlement Class or FLSA Collective, to Class Counsel, and Defense Counsel within ten (10) Days of receipt of the dispute.

X. COMPUTATION AND DISTRIBUTION OF PAYMENTS

A. Allocation of the Settlement Fund.

As good and valuable consideration for the waiver and release of claims set forth in Paragraphs VII(A and B), above, all members of the California Settlement Class and the FLSA Collective shall be allocated an estimated payment from the Net Settlement Amount pursuant to the following allocation formula:

1. Each member of the California Settlement Class will be assigned 1.5 points for each week worked as a Sales Development Representative for Defendant between December 2, 2016 and the date of Preliminary Approval. Each member of the FLSA Collective who worked as a Sales Development Representative for Defendant outside of California will be assigned 1.0 points for each week worked between December 2, 2017 and the date of Preliminary Approval.
2. The calculations of all workweeks worked pursuant to Paragraph 1 above shall be based on Defendant's records.
3. To calculate the proportionate share of the Net Settlement Amount for each member of the California Settlement Class and the FLSA Collective, the Claims Administrator shall:
 - a. Add all points for each member of the California Settlement Class and FLSA Collective together to obtain the "Total Denominator";
 - b. Divide the number of points for each member of the California Settlement Class and the FLSA Collective by the Total Denominator to obtain the "Portion of the Net Settlement Amount" for each member of the California Settlement Class and the FLSA Collective;
 - c. Multiply the Portion of the Net Settlement Amount for each member of the California Settlement Class Member and the FLSA Collective by the total amount of the Net Settlement Amount to determine the estimated individual lump-sum payment to each member of the California Settlement Class and FLSA Collective. The lump-sum of the

individual payments for all members of the California Settlement Class and the FLSA Collective shall equal the Net Settlement Amount. Each member of the California Settlement Class and the FLSA Collective shall be advised of their respective, estimated individual lump-sum payment, inclusive of their share of taxes, in the Notice.

B. Funding of Resolution.

The funds used for the Maximum Settlement Amount shall be paid into the Settlement Account by Defendant in two separate installments. Defendant shall wire the first installment payment of One Million Five Hundred Fifty Thousand Dollars and Zero Cents (\$1,550,000.00) to the Claims Administrator no later than seven (7) Days after the Court grants Preliminary Approval. Defendant shall wire the second installment payment of One Million Dollars and Zero Cents (\$1,000,000.00) and Employer Payroll Taxes to the Claims Administrator no later than seven (7) Days after the Effective Date.

The Claims Administrator shall issue one payment to Participating Class Members and members of the FLSA Collective. Within fourteen (14) Days after Final Approval, the Claims Administrator shall determine the Employer Payroll Taxes and shall communicate such amount to Defendant with a detailed explanation of the calculations. In the event of any dispute as to the calculation of the Employer Payroll Taxes, Defendant and the Claims Administrator shall meet and confer in good faith in an attempt to resolve the dispute. If the dispute cannot be resolved, it shall be submitted to the Court for a final determination. The Claims Administrator shall: (i) calculate and withhold, and report the share of applicable payroll taxes (including, without limitation, federal, state, and local income tax withholding, FICA, Medicare, and any state or local employment taxes) for each Participating Class Member and member of the FLSA Collective, (ii) remit applicable payroll taxes (including, without limitation, federal, state, and local income tax withholding, FICA, Medicare, and any state or local employment taxes and Employer Payroll Taxes) with respect to the monies distributed to all Participating Class Members and Participating Collective Members; and (iii) satisfy all federal, state, and local income and other tax reporting, return, and filing requirements with respect to the monies distributed to Named Plaintiffs, all Participating Class Members and Participating Collective Members, and Class Counsel. Defendant agrees to pay the Employer Payroll Taxes outside the Maximum Settlement Amount.

Within thirty (30) Days after receipt of the second installment of the Maximum Settlement Amount, the Claims Administrator shall mail the payment checks to all (a) Participating Class Members and members of the FLSA Collective Members; (b) the Court-approved litigation enhancements to Named Plaintiffs; (c) the Court-approved attorneys' fees and litigation costs to Class Counsel; and (d) the civil penalties due to the LWDA. The Claims Administrator will also issue payment to itself for Court-approved services performed in connection with the settlement. If a check is returned to the Claims Administrator as undeliverable, the Claims Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address.

Any funds from the distribution of payments to Participating Class Members that remain uncashed after one hundred eighty (180) Days from the date the settlement checks are issued shall be transmitted to the unclaimed property fund consistent with Code of Civil Procedure section 384. Uncashed settlement checks from the payments to members of the FLSA Collective will not be re-issued and the monies, and Employer Payroll Taxes on those amounts, will revert back to Defendant after 180 Days from their date of issue.

XI. ENFORCEMENT

The Parties have specifically negotiated the payment of the Maximum Settlement Amount and the Employer Payroll Taxes over a period of time. In the event Defendant defaults on its obligation to make either payment required by this Joint Stipulation of Settlement, Named Plaintiffs may elect to move the Court to enforce payment provisions of the Joint Stipulation of Settlement with the balance of any unpaid portion of the Maximum Settlement Amount and Employer Payroll Taxes being accelerated in full. In the event Defendant fails to timely make any payment required by the Joint Stipulation of Settlement, Named Plaintiffs must first afford Defendant a reasonable opportunity to cure the default through the following procedures. Prior to enforcing the Joint Stipulation of Settlement, Class Counsel must give written notice via e-mail to David G. Hoiles, Jr. at David.Hoiles@jacksonlewis.com. Defendant shall have ten (10) Days from the date of the receipt of such notice of default to cure the default by funding the Settlement Account with the overdue payment or payments. If Defendant fails to cure the default within ten (10) Days of receipt of written notice from Class Counsel, the balance of any unpaid portion of the Maximum

1 Settlement Amount and Employer Payroll Taxes shall accelerate in full, and Defendant shall be
2 responsible for any reasonable attorneys' fees and costs Named Plaintiffs incur in seeking to enforce the
3 Joint Stipulation of Settlement.

4 **XII. NO CONTRIBUTIONS TO EMPLOYEE BENEFITS PLAN**

5 The amounts paid under this Joint Stipulation of Settlement do not represent a modification of any
6 previously credited hours of service under any employee benefit plan, policy, or bonus program sponsored
7 by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any
8 other monetary entitlement under, benefit plans (self-insured or not) sponsored by Defendant, policies, or
9 bonus programs. Any payments made under the terms of this Joint Stipulation of Settlement shall not be
10 applied retroactively, currently or on a going forward basis as salary, earnings, wages, or any other form
11 of compensation for the purposes of Defendant's benefit plan, policy, or bonus program. Defendant retains
12 the right to modify the language of its benefit plans, policies, and bonus programs to effect this intent and
13 to make clear that any amounts paid pursuant to this Joint Stipulation of Settlement are not for "hours
14 worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans,
15 policies, and bonus programs for purpose of eligibility, vesting, benefit accrual, or any other purpose, and
16 that additional contributions or benefits are not required by this Joint Stipulation of Settlement.

17 **XIII. CLAIMS ADMINISTRATOR**

18 The Parties, through their respective counsel, have selected Analytics Consulting LLC as the
19 Claims Administrator to administer this Joint Stipulation of Settlement, which includes but is not limited
20 to distributing and responding to inquiries about the Notice, determining the validity of any disputes and
21 Requests to be Excluded, and calculating all amounts to be paid from the Net Settlement Amount. Charges
22 and expenses of the Claims Administrator, not to exceed \$25,000, will be paid from the Maximum
23 Settlement Amount. Any charges and expenses of the Claims Administrator greater than the allocated
24 \$25,000 will come from the Maximum Settlement Amount, subject to Court approval. If the actual Claims
25 Administrator fees are less than the Parties' estimation, the difference between the actual and estimated
26 Claims Administrator fees will revert to the Participating Class and Collective Members.

1 **XIV. ENHANCEMENT TO NAMED PLAINTIFFS**

2 Defendant shall not oppose an application by Named Plaintiffs, and Named Plaintiffs shall not
3 seek or receive an amount in excess of \$70,000.00 (\$10,000.00 each), for their participation in and
4 assistance with the Action. Any enhancement awarded to Named Plaintiffs by the Court shall be deducted
5 from the Maximum Settlement Amount for the purpose of determining the Net Settlement Amount, shall
6 be reported as income to Named Plaintiffs on an IRS Form 1099, and shall not be subject to payroll tax
7 withholdings. If the Court approves an enhancement of less than \$10,000.00 to each of the Named
8 Plaintiffs, then the unapproved portion or portions shall revert into the Net Settlement Amount to be
9 distributed between the Participating Class Members and Participating Collective Members on a *pro rata*
10 basis.

11 **XV. CLASS COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

12 Class Counsel shall file and serve their motion for attorney's fees, litigation costs, and request for
13 enhancement to Named Plaintiffs, along with all supporting evidence, at the time they file Plaintiffs'
14 Motion for Final Approval. Defendant shall not oppose an application by Class Counsel for, and Class
15 Counsel shall not seek or receive an amount in excess of \$850,000.00, which represents one-third (33-1/3
16 percent) of the Maximum Settlement Amount, for all past and future attorneys' fees necessary to
17 prosecute, settle, and administer the terms of this Joint Stipulation of Settlement. If the Court rejects or
18 reduces Class Counsel's application for attorneys' fees and costs, such determination shall not negatively
19 impact the Court's consideration of whether this Joint Stipulation of Settlement is fair and reasonable. If
20 the Court awards less than the requested amount and Class Counsel does not appeal that award, or if Class
21 Counsel appeals the award and the result of that appeal is an award of less than the amount requested,
22 only the awarded amount shall be paid to Class Counsel and shall constitute full satisfaction of
23 Defendant's obligation to pay attorneys' fees and costs. Class Counsel shall not seek or receive an amount
24 in excess of \$15,000.00 for reimbursement of litigation costs. Any attorneys' fees or litigation costs
25 awarded to Class Counsel by the Court shall be deducted from the Maximum Settlement Amount for the
26 purpose of determining the Net Settlement Amount. The "future" aspect of these amounts include, without
27 limitation, all time and expenses expended by Class Counsel in defending this Joint Stipulation of
28 Settlement and securing Final Approval (including any appeals therein). There will be no additional charge

of any kind to either the members of the California Settlement Class or FLSA Collective or request for additional consideration from Defendant for such work. This amount shall include all attorneys' fees, litigation costs, and expenses for which Named Plaintiffs and Class Counsel could claim under any legal theory whatsoever. Should the Court approve a lesser percentage or amount of fees or litigation costs than the amount that Class Counsel ultimately seeks, then the unapproved portion or portions shall revert to the Participating Class Members and Participating Collective Members as part of the Net Settlement Amount to be distributed *pro rata* pursuant to the formula set forth above.

All of Defendant's own attorneys' fees, costs and expenses incurred in this Action shall be borne by Defendant.

XVI. PAYMENT OF PAGA PENALTIES

One Hundred Thousand Dollars and Zero Cents (\$100,000.00) shall be allocated from the Maximum Settlement Amount for settlement of claims for civil penalties under the PAGA. The Claims Administrator shall pay seventy-five percent (75%) of this amount, or \$75,000.00, to the LWDA no later than thirty-seven (37) Days after the Effective Date. The remaining twenty-five percent (25%), or \$25,000.00, will be part of the Net Settlement Amount and distributed to the members of the PAGA Collective on a *pro rata* basis.

XVII. TAXATION AND ALLOCATION

For withholding tax characterization purposes, the Net Settlement Amount shall be deemed and is allocated by the Parties as follows:

- For Participating Class Members, 33% of each settlement payment will be allocated as wages and reported as wage income on an IRS Form W-2 in the year of payment and shall be subject to required payroll tax withholdings. All employee taxes required by law to be withheld shall be withheld from the Net Settlement Amount by the Claims Administrator and shall be remitted to the taxing authorities by the Claims Administrator. The other 67% percent of each settlement payment will be allocated as statutory and civil penalties and liquidated damages, reported as other income on an IRS Form 1099-MISC in the year of payment, and shall not be subject to payroll tax withholdings.

- For Participating Collective Members, 50% of each settlement payment will be allocated as wages, reported as wage income on an IRS Form W-2 in the year of payment, and shall be subject to required payroll tax withholdings. All employee taxes required by law to be withheld shall be withheld from the Net Settlement Amount by the Claims Administrator and shall be remitted to the taxing authorities by the Claims Administrator. The other 50% percent of each settlement payment will be allocated as statutory and civil penalties and liquidated damages, reported as other income on an IRS Form 1099-MISC in the year of payment, and shall not be subject to payroll tax withholdings.

IRS Form W-2's and Form 1099-MISC's will be distributed by the Claims Administrator at times and in the manner required by the Internal Revenue Code of 1986 and consistent with this Joint Stipulation of Settlement. If the Internal Revenue Code, the regulations promulgated thereunder, or other applicable tax law, is changed after the date of this Joint Stipulation of Settlement, the processes set forth in this section may be modified in a manner to bring Defendant into compliance with any such changes.

XVIII. COURT APPROVAL

Class Counsel shall file a Motion for Final Approval of the terms of this Joint Stipulation of Settlement and a Motion for Attorneys' Fees, Costs, and Litigation Enhancements at least sixteen (16) court days prior to the hearing seeking Final Approval or on any date specifically ordered by the Court.

This Joint Stipulation of Settlement is contingent upon Final Approval by the Court and the entry of Judgment. The Parties agree to take all steps as may be reasonably necessary to secure both Preliminary Approval and Final Approval of this Joint Stipulation of Settlement, to the extent not inconsistent with the terms of this Joint Stipulation of Settlement, and will not take any action adverse to each other in obtaining Court approval, and, if necessary, appellate approval, of this Joint Stipulation of Settlement in all respects. The Parties expressly agree that they will not file any objection to the terms of this Joint Stipulation of Settlement or assist or encourage any person or entity to file any such objection.

XIX. MISCELLANEOUS PROVISIONS

A. Stay of Litigation.

The Parties agree to the stay of all discovery in the Action, pending Final Approval of this Joint Stipulation of Settlement by the Court.

B. Interpretation of this Joint Stipulation of Settlement.

Except as expressly provided herein, this Joint Stipulation of Settlement has not been executed in reliance upon any other written or oral representations or terms, other than the Settlement Agreement and General Release of All Claims to be signed by Named Plaintiffs, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In entering into this Joint Stipulation of Settlement, the Parties agree that this Joint Stipulation of Settlement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. This Joint Stipulation of Settlement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to this Joint Stipulation of Settlement, or the subject matter hereof, will be resolved solely and exclusively in the Court, and the Parties hereby consent to the personal jurisdiction of the Court over them solely in connection therewith. Named Plaintiffs, on their own behalf and on behalf of the California Settlement Class and the FLSA Collective, and Defendant participated in the negotiation and drafting of this Joint Stipulation of Settlement and had available to them the advice and assistance of independent counsel. As such, neither Named Plaintiffs nor Defendant may claim that any ambiguity in this Joint Stipulation of Settlement should be construed against the other.

C. Further Cooperation.

The Parties and their respective attorneys shall proceed diligently to prepare and execute all documents, to seek the necessary approvals from the Court, and to do all things reasonably necessary or convenient to consummate this Joint Stipulation of Settlement as expeditiously as possible.

D. Confidentiality of Documents.

After the expiration of any appeals period, Named Plaintiffs, the Claims Administrator, and Class Counsel shall maintain the confidentiality of all documents, declarations, and other information obtained in connection with Named Plaintiffs' prosecution of the Action including, but not limited to, information and documentation exchanged informally by the Parties, unless necessary for appeal or such documents are ordered to be disclosed by the Court or pursuant to a validly issued subpoena.

E. Counterparts.

This Joint Stipulation of Settlement may be executed in one or more actual or non-original counterparts, all of which will be considered one and the same instrument and all of which will be considered duplicate originals. Electronic signatures compliant with the ESIGN Act and signatures transmitted by fax or .pdf shall have the same effect as an original ink signature.

F. Authority.

Each individual signing below warrants that they have the authority to execute this Joint Stipulation of Settlement on behalf of the Party for whom or which that individual signs.

G. Deadlines Falling on Weekends or Holidays.

To the extent that any deadline set forth in this Joint Stipulation of Settlement falls on a Saturday, Sunday, or legal holiday in the State of California, that deadline shall be continued until the following business day.

H. Severability.

In the event that any one or more of the provisions contained in this Joint Stipulation of Settlement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall in no way affect any other provision if Defense Counsel and Class Counsel, on behalf of the Parties and the California Settlement Class or FLSA Collective, mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Joint Stipulation of Settlement.

I. Escalation Clause.

To the extent there are inaccuracies in the data Defendant provided to Class Counsel on March 25, 2022, and those inaccuracies cause the total number of Eligible Workweeks through February 28, 2022 to increase by more than 5%, Defendant shall increase the Maximum Settlement Amount proportionately. The foregoing notwithstanding, the Parties acknowledge that Defendant has made no representations as to the number of Eligible Workweeks worked or to be worked by members of the California Settlement Class or FLSA Collective on or after March 1, 2022. The Parties further acknowledge that any Eligible

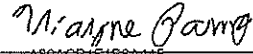
Workweeks worked by members of the California Settlement Class of FLSA Collective on or after March 1, 2022 shall not be used for purposes of determining whether this escalation clause has been triggered.

To the extent there are inaccuracies in the data Defendant provided to Class Counsel on March 25, 2022 or the representation Defendant made to Class Counsel on May 5, 2022 as to the number of individuals hired by Defendant or who assumed the role of a Sales Development Representative with Defendant between March 1, 2022 and May 2, 2022, or Defendant's estimate as to the number of additional individuals who are likely to be hired by Defendant for a Sales Development Representative role between May 3, 2022 and June 30, 2022, and those inaccuracies cause the total number of potential members of the California Settlement Class or FLSA Collective to exceed 1,750, Defendant shall increase the Maximum Settlement Amount proportionately by workweek to account for the inaccuracies in this data or representations.

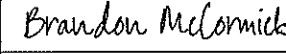
XX. INTEGRATION CLAUSE.

This Joint Stipulation of Settlement and a separate Settlement Agreement and General Release of All Claims to be signed by Named Plaintiffs set forth the entire agreement between the Parties, and fully supersede any prior agreements or understanding between the Parties. No rights hereunder may be waived except in writing.

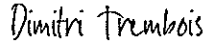
May 16, 2022
Executed on May __, 2022

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WAYNE PAMPALONI

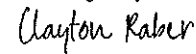
May 17, 2022
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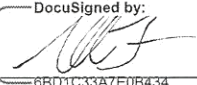
May 17, 2022
Executed on May __, 2022

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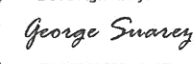
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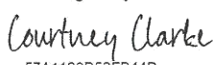
May 16, 2022
Executed on May __, 2022

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NICHOLAS JONES

May 18, 2022
Executed on May __, 2022

DocuSigned by:

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GEORGE SUAREZ

May 16, 2022
Executed on May __, 2022

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COURTNEY CLARKE

MEMORYBLUE, INC.

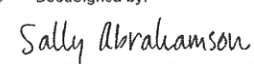
Executed on May 25, 2022

By: 
CHRIS CORCORAN
Co-Founder and Managing Partner

Approved as to form and content.

WERMAN SALAS P.C.
LIU PETERSON-FISHER LLP

May 16, 2022
Executed on May __, 2022

By: 
DOUGLAS M. WERMAN
SALLY J. ABRAHAMSON
JENNIFER LIU

Attorneys for Named Plaintiffs
NICHOLAS JONES, WAYNE PAMPALONI,
BRANDON MCCORMICK, DIMITRI
TREMBOIS, CLAYTON RABER, GEORGE
SUAREZ, and COURTNEY CLARKE

JACKSON LEWIS P.C.

Executed on May 26, 2022

By: 
DAVID G. HOILES, JR.

Attorneys for Defendant
MEMORYBLUE, INC.